

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 16,323
	)	
Appeal of	)	
	)	

INTRODUCTION

The petitioner appeals the decision by the Department not allowing her an earned income disregard in the calculation of an overpayment of ANFC received by the petitioner in September 1999. The issue is whether the petitioner at that time reported earnings from employment to the Department in a timely manner.

FINDINGS OF FACT

1. The petitioner was receiving ANFC in the summer of 1999. On July 23, 1999 she was hired to begin working for a home health agency on a per diem basis as a substitute personal care giver.

2. The petitioner attended a paid training session on July 27, 1999 and worked full days on August 7, 8, 14, and 15. It appears that the petitioner also moved into a new apartment in early August.

3. On August 6, 1999 the petitioner's caseworker received a computer "hit match" from The Department of Employment and Training (DET) showing that the petitioner was on record at DET as being employed by the home health agency.<sup>1</sup> That same day the caseworker sent the petitioner a notice asking her to verify her employment by completing an enclosed "employment questionnaire form". The notice also instructed the petitioner to "send me all paystubs you have received since you started employment". The notice also stated: "You have until August 18, 1999 (at least ten days) to bring or send us proof of the items listed above. If we do not receive this proof we cannot determine your continuing eligibility and amount of benefits for ANFC . . ."

4. The Department's records show that the petitioner called her worker on August 10, 1999 to discuss a deposit on her new apartment and to verify that she was working at the home health agency.

5. According to the petitioner her employer mailed her first paycheck to her on August 13, 1999. This is consistent with the date on the petitioner's first paystub.

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<sup>1</sup> According to the Department such computer information is routinely shared between DSW and DET.

6. The petitioner's regular caseworker was on vacation from August 12 through August 28, 1999. The worker who was covering for her at the time testified that the petitioner came to the district office on August 13, 1999 to apply for lifeline telephone service in her new apartment and brought with her a completed shelter expense form for her new apartment. The Department has no record of receiving any employment information from the petitioner on that day.

7. On August 19, 1999, the covering caseworker noticed that the Department's records showed no receipt of employment and wage information from the petitioner in spite of the August 18 deadline. On that date she sent the petitioner a notice stating: "This is a reminder that you will need to send me your paystubs from home health at the end of each month".

8. The Department's records, which appear to be reliable, show no other contacts by the petitioner with the Department from August 13 through September 24, 1999.

9. The petitioner maintains that she brought in a copy of her first paystub to the Department when she brought in her shelter expense statement on August 13. However, when confronted with the fact that August 13 was the date the paystub was mailed to her by her employer, and that she could

not have received it until one or three days later (August 13 was a Friday) the petitioner became upset and abruptly left the hearing.

10. When the petitioner's regular worker returned from vacation she found nothing in the petitioner's casefile. On September 16, 1999 she mailed the petitioner a notice closing her ANFC benefits effective October 1, 1999 because: "You did not provide required proof of your situation".

11. Upon receiving the above notice the petitioner contacted her worker and provided information about her wages. On September 29, 1999 she filed a new application for ANFC, which was granted based on wage information furnished by the petitioner and her employer.

12. The petitioner did not appeal any of the Department's actions during this time.

13. At some later time the Department determined that the petitioner had been overpaid ANFC benefits for September 1999 because she had not reported her receipt of wages in a timely manner. The petitioner does not dispute that she was overpaid in September, but she feels she reported her wages in a timely manner and that any overpayment was the Department's fault for not processing this information before she received her September ANFC benefits.

14. Whether or not the petitioner made a timely report affects the computation of her overpayment (see *infra*). If she did, and the subsequent overpayment is thus found to be the fault of the Department, the petitioner would be entitled to have an "earned income disregard" amount deducted from her earned income in September. This would lower the amount of her overpayment for that month. If it is found she did not report her wages in a timely manner, she does not receive a retroactive earned income disregard deduction.

15. Based on the testimony and the Department's records it is found that the petitioner did not report the amount of her earnings to the Department until at least September 28, 1999, when she filed her reapplication for ANFC. The petitioner's testimony that she brought her first paystub to the Department on August 13, 1999 is inconsistent with the Department's records and the date the paystub was mailed to her; and it cannot be credited.

ORDER

The Department's decision is affirmed.

REASONS

Welfare Assistance Manual (WAM) § 2234.2 includes the following provision:

Overpayments of assistance, whether resulting from administrative error, client error or payments made pending a fair hearing which is subsequently determined in favor of the Department, shall be subject to recoupment. Recovery of an overpayment can be made through repayment by the recipient of the overpayment, or by reducing the amount of payment being received by the ANFC group of which he is a member.

An overpayment is defined in the federal regulations as: "a financial assistance payment received by or for an assistance unit for the payment month which exceeds the amount for which that unit was eligible." 45 C.F.R. § 233.20(a)(13). Both the state and federal regulations provide for the recoupment of overpayments regardless of whether it was the fault of the recipient household or the state agency.

As noted above, the issue in this case is whether the petitioner was eligible for the earned income disregard for the month of September, 1999 in light of the above finding that she was late in reporting her income in that month.

W.A.M. § 2254.1 includes the following provision:

. . . the disallowance of earned income disregards will be imposed on any new or increased earned income which the recipient fails without good cause to report by the end of the calendar month following the month in which the new or increased income was first received. Disregards are allowed for the income which is reported

timely. Circumstances which could be considered as good cause for failure to report timely are limited to the following:

1. Natural disasters, such as fires or floods;
2. Illness of such severity that the recipient is unable to direct his or her personal affairs.
3. Refusal of an employer to provide earned income verification, or the unavailability of an employer to provide verification before the deadline;
4. Lost or stolen mail which is confirmed by the Postal Service;
5. Total gross earnings of the individual, less any allowable business expenses (self-employment only), do not exceed the amount of the standard employment expense deduction.

The above deadline for exemption from this disallowance has no effect on an assistance group's responsibility to report all changes in circumstances within 10 days of their being known to the group. When a recipient reports new or increased earned income after the 10-day period but no later than the end of the calendar month following the month in which the new or increased earned income was first received, any resulting overpayment must be recouped, but no disallowance will be imposed.

The above regulation imposes a "penalty" on late reporting households that consists of the loss of any earned income disregards for the months in which the income is not reported within a month following the month in which it was first received. Moreover, the "excuses" for such late reporting, whereby the penalty can be avoided, are expressly limited to those set forth in the regulation. The petitioner

in this case does not claim any excuse for nonreporting;<sup>2</sup> she maintains she did report and that the Department failed to process the information. As found above, this claim is not credible. Thus, the petitioner cannot be found eligible for the earned income disregards in September 1999.

Absent the application of this disregard, the Department's calculation of the petitioner's ANFC overpayment appears correct. Inasmuch as the Department's decision is consistent with the evidence and in accord with the applicable regulations the Board is bound by law to affirm it. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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<sup>2</sup> The petitioner admits that her employer furnished her with paychecks and stubs on a timely basis.